COURT OF APPEALS
DECISION
DATED AND RELEASED

March 19, 1998

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-1419-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ISIAH WASHINGTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

PER CURIAM. Isiah Washington appeals from a judgment convicting him of possession of cocaine with intent to deliver. Washington's appellate counsel filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California***, 386 U.S. 738 (1967). Washington received the report and filed a response. After considering the report and Washington's response, and

after conducting an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

The no merit report first addresses whether Washington entered his guilty plea knowingly, voluntarily and intelligently. Before the trial court may accept a guilty plea, it is required to determine that the defendant understands the charge and its consequences, and that the defendant is knowingly waiving his constitutional rights. *See* ***State v. Bangert***, 131 Wis.2d 246, 266-72, 389 N.W.2d 12, 22-25 (1986). The trial court questioned Washington at length, ascertaining that he understood the charge and its consequences, that he knew what the State would have to prove to convict him, and that he was aware of his constitutional rights and wanted to waive them. There would be no arguable merit to challenging the voluntariness of the plea on appeal.

The no merit report also addresses whether the trial court properly exercised its discretion in sentencing Washington to five years' imprisonment. In sentencing Washington to half of the potential ten-year sentence, the trial court considered Washington's age and physical condition, the effects of the crimes on the community, the seriousness of the offense, and Washington's lengthy prior criminal record, including convictions for voluntary manslaughter and sexual assault of a child. The trial court considered the appropriate factors in imposing sentence. *See* ***State v. Jones***, 151 Wis.2d 488, 495, 444 N.W.2d 760, 763 (Ct. App. 1989). The sentence is not excessive in light of Washington's prior record and the other factors considered by the trial court. Thus, we agree with the no merit report that there is no arguable merit to a claim that the trial court misused its sentencing discretion.

In his response, Washington first argues that he received ineffective assistance of appellate counsel because his counsel did not meet with him or talk to him about his case. Although the better course may well be for an appointed attorney to speak with his client before filing a no merit report, Washington's attorney has not ineffectively represented him simply by failing to do so. Counsel reviewed the record and filed a no merit report explaining why he believed there were no meritorious issues on appeal. There is no arguable merit to a claim that Washington received ineffective assistance of appellate counsel based solely on the fact that counsel did not meet with Washington in person before filing the no merit report.

Washington next claims that he received ineffective assistance of trial counsel because trial counsel did not raise the issue of whether Washington was competent to assist in his own defense. Washington contends that the court should have taken into consideration the fact that he has a metal plate in his head, that he has "passing out spells," that he is a veteran, and that he is seventy-three years old and that with age "comes physical, mental and emotional breakdowns."

Notably, Washington does not claim that he was actually incompetent or that he did not understand the trial court proceedings. Trial counsel did at one point raise the issue of whether Washington was competent, but later concluded there was no reason to hold a competency hearing because Washington understood the proceedings. When questioned by the trial court, Washington acknowledged that he was not suffering from any mental disease and was not feeble-minded. There is no arguable merit to a claim that Washington received ineffective assistance of trial counsel based on trial counsel's decision not to request a competency hearing.

Washington next argues that all evidence connected with the search of his home should be stricken from the record because the arresting officer stated that he had a search warrant to search the home, but at no time did he show or serve Washington with a warrant. The police are not required to show a search warrant to a person who does not ask to see it. There is no arguable merit to this issue.

Washington next argues that trial counsel was ineffective because he did not request a hearing to determine whether $350 found in Washington's pocket was drug money or obtained from some other source. Washington contends that the trial court may have considered his sentence and case differently if it had known that the money was not drug money. At sentencing, Washington's counsel informed the court that the money was in Washington's pocket because Washington had just cashed his veteran's benefits check. Counsel thus provided an alternative explanation for the presence of the money. There is no arguable merit to this claim.

Our independent review of the record reveals no other potential issues. Accordingly, the judgment of the trial court is affirmed and Attorney Timothy Provis is relieved of further representing Washington in this matter.

By the Court.—Judgment affirmed.